IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.O.P.No. 4241 of 2006

and Crl.M.P.Nos.1067 and 1068 of 2006

1. Kandasamy
2.Mrs.Kamala ... Petitioners/Accused

-vs-

H.Savithiri ... Respondent/Complainant

Criminal Original Petition filed to call for the records and quash the proceedings in C.C.No.258 of 2002, dated 26.03.2002 on the file of the Judicial Magistrate, Alandur.

For petitioners : Mr.S.Y.Masood

For respondent : Mr.T.Easwaradhas

O R D E R

This Criminal Original Petition has been filed by the petitioners / accused under Section 482 of the Code of Criminal Procedure, seeking an order to call for the records and quash the proceedings in C.C.No.258 of 2002, dated 26.03.2002 on the file of the Judicial Magistrate, Alandur.

2. It is seen from the typed set that the respondent herein has filed a private complaint against the petitioners / accused under Section 200 of Cr.P.C r/w Sections 420, 477, 477A, 409, 408, 406 r/w 120B of IPC. According to the respondent / complainant, she is in possession of an immovable property to an extent of 5381 Sq.feet at Nanganallore, Chennai, which was originally purchased by her husband R.Haridoss in the year 1970, by way of a registered sale deed. The petitioners / accused 1 and 2, who are friends to the respondent for about 20 years approached the respondent / complainant and her husband and received Rs.3,00,000/- on 26.05.1995 in order to run a school by name .Sri Vani Vidhyalaya..

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An agreement was also entered into between the parties in a stamp paper and therefore, the complainant allowed the petitioner / A1 and A2, to enter into the property and the complainant herself built superstructure at her cost in the name and style of .Sri Vani Vidhyalaya, but the petitioners / accused subsequently conspired to take over the entire administration and money along with the superstructure constructed in the said property and also took control over the management.

3. According to the respondent / complainant, the petitioners / accused have cheated her, by way of creating documents and made her to part with a sum of Rs.3,00,000/- for school materials, vacant land without any rent and they made a loss to the complainant to the tune of Rs.12,00,000/-, accordingly, they committed offence under the aforesaid sections.

4. Learned counsel appearing for the petitioners would submit that a suit was filed by the first petitioner / A1 in O.S.No.300/99 on the file of the District Munsif-cum-Judicial Magistrate, Alandur, which was dismissed by the said Court. In support of his contention, the petitioners have filed a Xerox copy of the Judgment, dated 08.01.2001 passed in O.S.No.300 of 1999.

5. It is seen from the typed set that a civil suit was filed by Vidhyalaya Educational Trust represented by its Managing Director A.S.Kandasamy against one Haridoss. Here, the private complaint has been given by K.Savithiri w/o Haridoss against the petitioners 1 and 2. The complainant is admittedly not a party to the civil suit. The law is well settled that this Court can exercise its jurisdiction under Section 482 of the Code of Criminal Procedure only to prevent abuse of process of any court, subordinate to it or otherwise to secure the ends of justice. The court has to consider whether there is any prima facie case made out on the complaint and also the materials placed before the trial court. If a criminal case is made out and there is no abuse of process of court, this Court cannot quash the proceedings, invoking the inherent power under Section 482 of Cr.P.C and if there is any valid defence available in favour of the petitioner / accused, they are at liberty to raise such a defence before the trial court.

6. Learned counsel for the petitioners in support of his contention cited the following decisions :

1. M/s. Kunstocom Electronics (I) Pvt. Ltd vs. Gilt Pack Ltd., AIR 2002 SC 739
2. Hridaya Rajan Pd. Verma vs. State of Bihar, AIR 2000 SCC 2341.

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7. In the decision, M/s. Kunstocom Electronics (I) Pvt. Ltd vs. Gilt Pack Ltd., reported in AIR 2002 SC 739, the Hon.ble Supreme Court has held that no offence of cheating was made out, since it was purely a case of breach of contract, arising out of non supply of quantity of goods, as per the agreement entered into between the parties. Here in this case, the facts are different. Therefore, the aforesaid decision is not applicable for the facts and circumstances of the case on hand.

8. Learned counsel for the respondent cited the following decisions :

1. Shiva Nath Prasad vs. State of West Bengal and others, 2006 (1) Crimes 204 (SC)
2. Cref Finance Ltd., vs. Shree Shanthi Homes (P) Ltd., 2005 SCC (Cri) 1697.

9. In the decision, Shiva Nath Prasad vs. State of West Bengal and others reported in 2006 (1) Crimes 204 (SC), the Hon.ble Supreme Court has held that "At the outset, we reiterate that credentiality of the complainant at this stage is not relevant. As stated above, in this case, what is alleged by the complaint, inter alia, is that he was a privy to the discussions and consultations and thinking which went into making of the mutual wills and the mutual trusts; that, he was a formal witness to some of these deeds and that he was aware that the couple had mutually agreed to the disposal of the property to charity after their demise. In the facts and circumstances of this case, at this stage, we are not inclined to accept the argument that the complaint should be dismissed at the initial stage on the ground of alleged malafides of the complainant."

10. In the decision, Cref Finance Ltd., vs. Shree Shanthi Homes (P) Ltd., reported in 2005 SCC (Cri)1697, the Hon.ble Supreme Court has held that "cognizance is taken of the offence and not of the offender and therefore, once the court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence."

11. It is clear that the cognizance is taken at the initial stage when the Magistrate puruse the complaint with a view to ascertain whether any commission of offence is disclosed and after considering the materials placed before it, the court decides to proceed against the accused, on the ground that prima facie, case is made out.

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12. With the materials available on record, I am of the considered view that it cannot be construed that no criminal case has been made against the petitioners / accused. However, the petitioners are at liberty to raise their defence before the learned Judicial Magistrate.

13. In the light of the decisions of the Hon.ble Apex Court, I am of the considered view that the Criminal Original Petition fails and the same is liable to be dismissed.

14. In the result, the Criminal Original Petition is dismissed. Consequently, connected Crl.M.Ps are also dismissed.
tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
1. The Judicial Magistrate, Alandur.
2. - do - Thro The Chief Judicial Magistrate, Chengleput

+ one cc to Mr. S.Y.Masood, Advocate sr no. 29679

BK(CO)
NM(19.06.07)

Order in
Crl.O.P..No.4241 of 2006

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